92-1680

Supreme Court, U.S.
FILED
NOV 18 1992
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

LUIS A. SORO A/k/A & D/B/A
CITICORP MORTGAGE CO.INC.,

Petitioner,

versus

Citicorp ET. AL.,

Respondant

Petition For A Writ of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

LUIS A. SORO A/K/A & D/B/A
CITICORP MORTGAGE CO. INC.,
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(305) 534-5000

23 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether the Honorable Lower Court erred in affirming the opinion of the District Court in not holding the term "citicorp" GENERIC, INVALID, FATALLY WEAK, UNENFORCEABLE, and EXTENSEVELY USED BY THOUSANDS OF FLORIDA CORPORATIONS and MILLIONS WORLD WIDE, and failed to cancel the registration # (982,066) as provided by 15 U.S.C. § 1119 McCarthy supra 12:18 at 441-42 and failed to observed that confusion between service marks and similarty of appearance is determined on the basis of the TOTAL effects of the designation rather than on a comparison of individual features.

2. Whether the District Court erred in not reopening this case dispite the massive amount of new information and evidence that was provided, and granting the summary judgment filed out of time and not touching the major issues.

3. Whether the Lower Court erred in affirming the opinion which states that the

counter claims filed by Soro are dismissed as untimely and for lack of standing and failed to realize that this was the first and only time I was offered to file them and request a jury trial to recover the gargantuan damages I have suffered.

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UNITED STATES OF AMERICA

LUIS A. SORO A/K/A & D/B/A
CITICORP MORTGAGE CO. INC.,

Petitioner

versus

Citicorp ET. AL.,

Respondant

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioner, Luis A. Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC., Respectfully prays th at a Writ of Certiorari issue to

review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit affirming the Lower Court's Opinion.

Respondant has a generic and invalid term used in every type of business all over the world and they have changed their name in Florida to Citibank. I Luis A. Soro a/k/a & d/b/a have not had any type of trial in-front of a jury and Respondant poses an enormous threat to the entire banking system here in Florida if they are permitted to remain in Florida, not to mention the massive stock manipulation the are involved with.

Respondant has violated Federal and Florida banking laws and rules, and will continue to do so unless they are stopped and directed out of Florida.

I am Respectfully requesting that I beable to face my accusser in a Court of law and in front of a Florida Jury just like the Six (6th) amedment to the U.S. Constition says.

OPINIONS BELOW

The Opinion of the Court of Appeals which was written but unpublished appears in Appendix A to this Petition. The written opinion of the District Court for the Southern District of Florida appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals Opinion in this matter was entered on August 24, 1992, and is set forth in Appendix A. This Court's Jurisdiction is invoked under Title 28, U.S.C.§ 1254 (1) and 28 U.S.C.§ 2101 (c) the SIX (6th) amedment to the U.S. Constitution, Fed. R. Civ. P. 63, and general Federal Law.

CONSTITIONAL AND STATUTORY PROVISIONS

I Luis A. Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC., did not get a fair trial. I have not been able to face my accuser in court and infront of a Florida Jury. Respondant has HARRASSED me in a gargantuan way and I did not get my share of justice under the law. As I watched the Judge Thomas

hearings before he was appointed to this court I saw that he was accused of a lot of things that were not true but he was given a fair chance to clear his good name. My good name has been taken away from me by the lower Courts and I have not had a fair chance to clear my good name by a Florida Jury. Also the SIX (6th) amedment to the U.S. Constitution states that I will beable to face my accuser in a court of law. Wherefore I Respectfully request that this Honorable Court review the laws and grant leave to face a Florida Jury.

STATEMENT OF THE CASE

The United States District Court for the Southern District of Florida had jurisdiction pursuant to Title 28 U.S.C.§1332, the amount of damages I had and because this is a compulsory Counterclaim, venue is proper in the District Court pursuant to 28 U.S.C. 1391.

On August 26, 1985 a complaint was filed in the District Court for the Southern District of Florida against CITICORP MORTGAGE CO. INC., for alleged trademark infringing of a generic,

unenforcable, and cancellable term. On May 13, 1986 the summons was served vie a third person making them improperly served. On January 14,1987 an ammended complaint including me Luis A. Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC., personally as a party to the matter was filed, on March 12, 1987 Respondant filed a moot motion for summary judgment filed out time with the time schedule ordered by the Honorable Judge Eugene P. Spellman on December 19, 1986. The case continued and on September 8, 1987, a summary judgment was entered for Respondant on all counts against CITICORP MORTGAGE CO. INC., and me Luis A. Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC., personally. On October 6, 1987 I appealed the District Court's opinion to the Eleventh Circuit Court of Appeals. On June 30, 1988 the Court of Appeals reversed and remanded the case in part and dismissed in part. The Court did not realize that I Luis A. Soro was a/k/a &

d/b/a CITICORP MORTGAGE CO. INC., and therefore I could also bring an appeal on behalf of CITICORP MORTGAGE CO. INC.,. On October 6, 1988 the District Court again granted the moot motion for summary judgment without standing against me Luis A. Soro. I again appealed the District Court's opinion because it was providing protection to a generic, invalid, uninforcable, fraudulently obtained, fattlly weak, and extensevely used by thousands of Florida corporations the term "citicorp". Also the District Court's opinion was not consistent with the case law that was provided and that should have been reviewed when entering an opinion in this case. Centrust Bank v. Suntrust Bank, 87-1314 Civ-ALH (Miami), Chase Federal Bank v. Chase Manhattan Bank 84-1642-Civ-WMH (Miami) Cummins Engine Co. Inc. v. Continental Motors Corp. & the CANCELLED tradename "Turbodeisel" 359 F.2d 892, 894, 53 C.C.P.A. 1167, 1169 (1966) Fidelity Bond and Mortgage CO. v. Fidelity Bond and Mortgage CO. of Texas 37

F.2d 99 (5th Cir. 1930), First Southern Federal Savings and Loan Asso. v. First Southern Savings and Loan Asso. 614 F.2d 71, 74, (5th Cir. 1980) Murphy Door Bed Co. v. Murphy Bed Co. (2nd Cir. 1989) Steak & Brew v. Beef & Brew 370 F. Supp. 1030 (1974) Sun Bank v. Sun Federal 615 F.2d 311 (5th Cir.1981) Surf Club v. Tatem Surf Club 151 Fla. 406-10 So. 2d 554-557 (1942), Penn Yan Boats v. Sea Lark Boats 359 F. Supp. 948 (S.D. Fla.1972) affd. Norton v. Curtiss 433 F 2d 779 (C.C.P.A. 1970), Kaiser Aluminum & Chemical Corp. v. Monolith Portland Midwest Co. 407 F.2d 288 (9th Cir. 1969) Dresser Industries, Inc. v. Eltra Corp. 435 F. Supp. 153, 194-195 (N.D. Ohio 1977) Carter Wallace, Inc. v. Davis-Edwards Pharmacal Corp. 443 F. 2d 867 (2d Cir. 1971) Trizillo v. P&Z Mergentime 532 F.2d 1393 (D.C. Cir. 1976) Standard Oil Co. v. Montedison S.P.A. 479 F. Supp. 370 (Del 1980) See 15 U.S.C. § 1120 Emphasis Added). My company name has been stolen from me without a jury trial after I had had it for seven (7) years

and it was registered to me in Florida. I am also Respectfully requesting that this Honorable Court return it to me. I am seeking compensation for the gargantuan damages Respondant has caused me when they breached the contract I had with the telephone Yellow pages in Florida. See Penzoil Co. v. Texaco, Inc. case # 84-05905 (151st Dist. Ct., Harris County, Tex. Nov. 15, 1985) in which Pennzoil was awarded 10.53 Billion dollars for tortious interference they suffered from Texaco. My case is very similar to the Pennzoil case and I have exhaused all my options in the Lower Courts and I have not been able to face a jury dispite the massive amount of new and information and evidence I have collected, to state my case, and get the justice I am due.

I am Respectfully requesting that if this Honorable Court elects not to address the issues presented at this time, it remand the matter to the Lower Courts for a redetermination of this Court's Opinion. I Luis A.

Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC. have not received justice.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED FOR 2 REASONS: This petition presents an issue resolved by implication by this Court but has not specifically and unequivocally decided by this Court, and the Opinions below conflicts by implicat ion with previous decisions of this Court and with the decisions of other circuits.

The Courts have constently prevented a generic term used in every type of business from being protected, and the term "citicorp" is used in every type of business in Florida and all over the world. See case law authorities listed in this petition. Setting all this aside Respondant is in very poor financial condition and should be prevented from buying failed banks. Rep. John Dingell said in a report on U.S. banks "Citicorp is broke" Their stock is being manipulated and insider trading is taking place.

Federal law and Florida law related to

banking strickly prohibits bank holding companies to establish a bank in Florida. I have been Harrassed, intimited, and threaten and I have done nothing wrong, all I did was form my corporation in good faith and with clean hands and with the approval of the Secretary of State of Florida and the Florida Comptroller's Office. To continue I was here first and Respondant was barred from entering my area which is the State of Florida. They want to STEAL my name in my area and this is not fair and I have not been able to present my side of the case orally to a Florida Jury.

Respondant has caused me gargantuan damages and this Honorable Court should not tolerate this massive abuse to occur to a small defendless corporation and its young president, and not without a jury trial. This Honorable Court should review the relief sought, the compensation that is requested and that should be granted.

The Honorable District Court erred in failing to weigh the factors "identity of

service facilities and customers", the weak- of the mark, apparent fraud, and the fact that we have traditionally tolerated a greater degree of resemblance among the names of financial institutions. Centrust Bank v. Suntrust Bank 87-1314 Civ-ALH (Miami) Chase Federal Bank v. Chase Manhattan Bank 84-1642 Civ-WMH (Miami) Sun Bank v. Sun Federal 615 F.2d 331 (5th Cir. 1981). This error was affirm by the Eleventh Circuit Court of Appeals, and I have never been able to present my case orally at any level. Furthermore if there was no likelihood of confusion in this case because Respondant was barred from entering my area the State of Florida, hence no trademark infringing could occur. Wholly appart from that "citicorp" is to weak a mark to merit trademark protection. The Honorable Lower Courts failed to apply trade regulation key # 347 which states "in determining likelihood of confusion between service marks, similarty of appearance is determined on the

basis of the total effect of the designation rather that on a comparison of individual features. In this service mark infringent action I have provided evidence ofextensive third-party use of the words "citi" or "city" or "cities" and corp or corporation used consecutively or in the tradename and based on this conclusion can be drawn with impressive evidence that there would be no likelihood of confusion between the two marks, specially when a service mark is itself weak, minor additions may effectivelly negate any confusing similarity.

CONCLUSION

For all the reasons stated above, a writ of certiorari should be issued to review the judgment and opinion of the Lower Court in this matter. Justice should require that I be heard orally. Respondant has entered my area and should be directed out of my area as soon as possible. By business reputation has been destroyed by a bankrupt company that appears to believe it is above the law and

does not have to follow the laws and rules of the court. The motion for summary judgment was not filed within the time schedule set by the Court and it has been over six years and I have never recieved a copy of that motion from them. Respondant's defense is a sham and it is time a court of law halts them before they cause more damages and problems to other people that are not guilty of anything.

The Honorable District Judge Eugene P. Spellman on December 19, 1986 Ordered that all Motions must be filed 15 days prior to the pretrial conference. (14) Fourteen days prior to the pretrial conference Respondant filed a moot motion for summary judgment according to the Orders of the Honorable Judge Eugene P. Spellman of December 19, 1986. I Luis A. Soro a/k/a & d/b/a CITICORP MORTGAGE CO. INC., was not informed or had any know-lege of a motion for summary judgment and I certainly would not have had approved of it in violation of the Judge's Order. I Luis A. Soro was doing business as and was also known

as CITICORP MORTGAGE CO. INC. but I was not able to bring or file any motion on my behalf. I have been convicted of a very serious crime trademark infringing and I have not been offered the chance to face my accuser in a court of law just like the 6th amendment to the United States says.

I have been financially decapitated by Respondant because they breached the contract I had with the telephone Yellow Pages in the most important year for the mortgage business in 50 years. My company name has been stolen and taken from me without a jury trial.

I had this name for 7 years and it was registered to me in Florida by the Secretary of State and the Florida Comptroller's offife, and Respondant was bared from entering my area.

The Pennzoil Co. v. Texaco Inc., case # 84-05905 (151st Dist. Ct. Harris County Tex. Nov. 15, 1985) is very similar to my case. Pennzoil was awarded 10.53 billion dollars for tortious interference they suffered from

Texaco. I have exhausted all my options in the Lower Courts. The Courts have constently prevented a generic term from being protected and case law since 1930 is on my side. I have not recieved a fair trial by jury although I formed my corporation in good faith and with clean hands was a/k/a & d/b/a CITICORP MORTGAGE CO. INC., and I first used the term CITICORP MORTGAGE CO. INC., in Florida and the whole world. Respondant was barred from entering Florida because they are a bank holding company and they finilly sneaked into the state in 1984 three (3) years after I had already established my corporation in good faith and with clean hands. The lawsuit was filed 5 (five) years after I had formed my company in good faith and with clean hands and two years before Respondant entered Florida. That means that we operated in the same area they were barred from entering before they filed suit, that is 730 days.

If this Honorable Court elects not to

address this writ at this time, it is Respectfully requested that the writ issued and that the matter be remanded to the Lower Court for redermination in light of this Court's opinion in other cases.

A gargantuan injustice has been done to me in the lower courts. I feel just like the Honorable Justice C. Thomas the new member of this high Court. He was accused of a lot of things but he was given the chance to orally clear his name.

I have been brutally attacked by an incompetant, bankrupt, corporation that is in worse financial shape than BCCI, Centrust, Lincoln Saving and Loan, Silverado Savings & Loan and Southeast Bank combined, and should be directed OUT OF FLORIDA, and I have not been given the chance to orally clear my good name, recover the massive damages I have suffered, and have my registered name reterned to me by a Florida Jury. Respondant should be punished for their reckless actions.

Wherefore I Respectfully request that

a writ be issed and I be given a chance to present my case orally.

Respondant was in flagrant violation of both Federal and Florida banking law and they mysteriously changed their name in Florida, and I belive this should be examined microscopically by this Court. This change of name only shows implied malice behind Respondant's sophisticated manipulation of both Federal and Florida banking laws. Their presence in Florida should be termed intolerable under whatever name they do business in Florida, they are exposing the entire state banking business to a gargantuan debacle and that is only a matter of time.

Respectfully submitted,

LUIS A. SORO A/K/A & D/B/A
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INDEX TO APPENDICES

Appendix A The Unpublished written opinion of the Court of Appeals for the Eleventh Circuit

Appendix B The Written Opinion of the District Court for the Southern District of Florida

IN THE UNITED STATES COURT OF

APPEALS FOR THE ELEVENTH CIRCUIT

Filed

Aug 24, 1992

No. 92-4313

MIGUEL J. CORTEZ

CLERCK

CITICORP,

Plaintiff- Counter-

versus

claim defendant-

Appellee

CITICORP MORTGAGE CO. INC.,

Defendant,

LUIS A. SORO,

Defendant-Counter-

claim Plaintiff-

Appellant.

On Appeal from the United States District for the Southern District of Florida

BEFORE: ANDERSON, EDMONDSON and BIRCH, Circuit Judges.

By THE Court:

Appellee's motion to dismiss as a frivolous appeal pursuant to Eleventh Circuit

R. 42-2 *is granted.*

Appellee's request for sanctions, including attorney's fees is granted.

Appellant's motion to strike appellee's m otion to dismiss is denied.

UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT
OF FLORIDA

CITICORP,

Plaintiff,

vs.

Case No. 85-2960-CIV-
KEHOE

CITICORP MORTGAGE CO. INC.,
and LUIS SORO

Defendants,

ORDER ON MOTION TO
REOPEN CASE PURSUANT
TO Fed.R. Civ.P. 63

THIS CAUSE is before the Court upon the motion of Defendant Luis Soro to reopen this case pursuant to Federal Rule of Civil Procedure 63.

After a review of the motion and response, it is ORDERED AND ADJUDGED that the motion is DENIED. (The movant has failed to demonstrate the applicability of the above-referenced rule to the ackonwledge facts of this case.)

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of February, 1992.

JAMES W. KEHOE
U.S. DISTRICT JUDGE